

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

DIGITAL MEDIA SOLUTIONS, LLC,

Plaintiff,

V.

SOUTH UNIVERSITY OF OHIO, LLC, *et al.*,

Defendants.

CASE NO. 1:19-CV-00145

JUDGE DAN AARON POLSTER

MAGISTRATE JUDGE THOMAS
M. PARKER

**JOINT MOTION OF THE RECEIVER AND STUDIO ENTERPRISE MANAGER, LLC
TO APPROVE A DIRECTION LETTER REQUIRING STERLING PAYMENT
TECHNOLOGIES, LLC N/K/A EVO PAYMENTS, INC. TO DISTRIBUTE CREDIT
CARD PAYMENTS THAT BELONG TO SOUTH UNIVERSITY, THE ARTS
INSTITUTES AND/OR STUDIO**

Studio Enterprise Manager, LLC (“Studio”) and Mark E. Dottore, the receiver (the “Receiver”) of the Receivership Entities¹ (collectively, the “Parties”) jointly move (the “Motion”) this Court hereby for the entry of an order approving a direction letter requiring Sterling Payment Technologies, LLC, a wholly owned subsidiary of EVO Merchant Services, LLC (“EVO”), to distribute credit card payments that belong to South University – Member, LLC (collectively with all of its direct and indirect subsidiaries “South University”), The Arts Institutes International, LLC (collectively with all of its direct and indirect subsidiaries the “Arts

1 The Receivership Entities are Dream Center Education Holding LLC (“DCEH”), Dream Center Education Management LLC, Dream Center Argosy University of California LLC and its direct subsidiary Argosy Education Group LLC (together, “Argosy”), South University of Ohio LLC, South University of Michigan LLC, The DC Art Institute of Raleigh-Durham LLC, The DC Art Institute of Charlotte LLC, DC Art Institute of Charleston LLC, DC Art Institute of Washington, LLC, The Art Institute of Tennessee-Nashville LLC, AiTN Restaurant LLC, The Art Institute of Colorado LLC, DC Art Institute of Phoenix LLC, The Art Institute of Portland LLC, The Art Institute of Seattle LLC, The Art Institute of Pittsburgh, DC LLC, The Art Institute of Philadelphia, DC, LLC, DC Art Institute of Fort Lauderdale LLC, The Illinois Institute of Art LLC, The Art Institute of Michigan LLC, The Illinois Institute of Art at Schaumburg LLC, DC Art Institute of Phoenix, LLC, The Art Institute of Las Vegas LLC, The Art Institute of Indianapolis, LLC. and AiIN Restaurant LLC.

Institutes”) and/or Studio. In support of this Motion, the Parties respectfully represent as follows:

DCEH entered into that certain Merchant Processing Agreement dated as of December 27, 2017 by and among EVO, Wells Fargo Bank, N.A. and DCEH, as amended by that certain Addendum to Merchant Processing Agreement, dated as of December 27, 2017 (together, the “Processing Agreement”), whereby EVO processes, collects and remits credit card payments for DCEH. On January 7, 2019, Studio and certain other parties executed a series of documents and agreements (the “Reorganization Documents”). The Reorganization Documents provided, among other things, for the acquisition of South University and the Arts Institutes by Education Principal Foundation (“EPF”), and the acquisition of certain accounts receivable, intellectual property or other assets of the Arts Institutes and the Receivership Entities by Studio. Pursuant to the Reorganization Documents, Studio maintains that it has acquired all of the accounts receivable of all campuses of the Arts Institutes and certain campuses of Argosy that operated under the Art Institute brand name (collectively, the “Studio Receivables”).

EVO has informed Studio and the Receiver that after a release in the amount of \$69,590.23 made to the Receiver on or about July 5, 2019, EVO is currently holding a total of \$3,574,937.18 (the “Retained Payments”), which the other parties to the EVO Direction Letter have determined should be apportioned as \$1,517,254.50 of credit card payments that are either owed to the Arts Institutes or are Studio Receivables owed to Studio (the “Ai/Studio Retained Payments”) and \$2,057,682.68 of credit card payments that are owed to South University (the “South Retained Payments”).

Studio and the Receiver file this Motion to approve the Irrevocable Direction Letter Regarding Certain Accounts Receivables, attached hereto as Exhibit A (the “Direction Letter”)

and cause EVO to distribute the Ai/Studio Retained Payments to the Arts Institutes and the South Retained Payments to South University, pursuant to the terms of the Direction Letter. Studio and the Receiver no longer have any need for the Processing Agreement with EVO; the Direction Letter contemplates an agreement to terminate the Processing Agreement and the end of EVO's collection, processing, or distribution of credit card payments for the parties to the Processing Agreement. The Direction Letter includes an acknowledgement that the Retained Payments constitute the entirety of any amount that EVO is holding pursuant to the Processing Agreement.

Finally, the Direction Letter allows EVO to hold back \$100,000.00 (the "Holdback Amount") of the Retained Payments pursuant EVO's security interest in the Retained Payments pursuant to the terms of the Processing Agreement (to cover losses on the applicable accounts, including due to chargebacks and fines (collectively, the "Losses")). The Holdback Amount will be held by EVO and attributed pro rata between the Ai/Studio Retained Payments and the South Retained Payments until no later than January 1, 2020 (the "Holdback Release Date").

The Direction Letter empowers the Receiver (on behalf of DECH and the Receivership Entities, Studio, South University, and the Arts Institutes) to authorize and direct EVO to remit, within two business days after Court approval of this Motion, (i) \$1,474,813.07 (which represents the Ai/Studio Retained Payments of \$1,517,254.50 less \$42,441.43 of the Holdback Amount) to the Arts Institutes, and (ii) \$2,000,124.11 (which represents the South Retained Payments of \$2,057,682.68 less \$57,558.57 of the Holdback Amount) to South University. Further, within two business days after the Holdback Release Date, EVO will remit the full amount of the Holdback Amount remaining after the deduction of any Losses (allocated, as directed by Studio, between the Ai/Studio Retained Payments and the South Retained Payments) to the Arts Institutes and South University.

The Parties believe that the approval of the Direction Letter and the return of the Retained Payments by EVO is in the best interest of the Receivership Entities, Studio, South University, and the Arts Institutes, and it avoids the uncertainty and significant expense of potential litigation regarding the Retained Payments. South University and the Arts Institutes are in dire need of the Retained Payments to fund current obligations, and EVO is not entitled to hold the Retained Payments indefinitely without reason pursuant to the terms of the Processing Agreement. The termination of the Processing Agreement in accordance with the Direction Letter also allows the Receiver, Studio, the Arts Institutes and South University to properly allocate the credit card payments collected by EVO to the relevant parties without unnecessary interference.

WHEREFORE, the Parties respectfully request that this Court enter an order: (a) approving the Direction Letter; (b) compelling EVO to return the Retained Payments in accordance with the terms of the Direction Letter; (c) granting the Parties such other and further relief as is just and proper.

[Remainder of page intentionally blank; signature page follows]

November 5, 2019

Respectfully submitted,

/s/ Robert T. Glickman

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CERTIFICATE OF SERVICE

I hereby certify that on November 5, 2019, a copy of the foregoing Joint Motion of The Receiver and Studio Enterprise Manager, LLC to Approve a Direction Letter Requiring Sterling Payment Technologies, LLC n/k/a EVO Payments, Inc. to Distribute Credit Card Payments that Belong to South University, The Arts Institutes and/or Studio, was filed electronically. Notice of this filing will be sent to all parties by the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ M. Colette Gibbons

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